IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE GHULAM MOHAMMED

WRIT APPEAL No: 2070 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27/10/2004 in WP No: 19654 OF 2004 on the file of the High Court.)

Between:

K. Sreenivasulu, S/o K. Hanumanthu,
R/o H.No. 1-7-55/4, Old Bus Stand, Mahaboobnagar.

..... APPELLANT

AND

1 The Mahaboobnagar District Cooperative Marketing Society Limited, Mahaboobnagar, Mahaboobnagar District, Rep. by its Chairman.
2 The District Co-operative Officer, Mahaboobnagar, Mahaboobnagar District.
3 The District Collector, Mahaboobnagar.

.....RESPONDENTS

Counsel for the Appellant: MR.A.SUDERSHAN REDDY
Counsel for the respondent No.1: MR. D.V. BHADRAM.
Counsel for the Respondent 2: GP FOR COOPERATION
Counsel for the respondent No.3: G.P. FOR REVENUE.

The Court made the following:

ORAL JUDGMENT:-

(per Hon'ble The Chief Justice)

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1. The appellant is the writ petitioner and in this appeal questions the order passed by the learned Single Judge dismissing the Writ Petition.

2. In the Writ Petition order dated 27.09.2004 passed by the District Collector, Mahaboobnagar, was challenged. By the said order, District Collector set aside the lease deed No.2488, dated 14.05.2004, by which the District Cooperative Marketing Society Limited, Mahaboobnagar, had leased out its vacant land admeasuring 4745.79 sq.yds. to the appellant. Though the challenge in the Writ Petition was on numerous grounds, but the primary ground taken was that the District Collector had passed the order in clear violation of the principles of natural justice. The learned Single Judge dismissed the Writ Petition on the ground that the issues raised in the Writ Petition are essentially based on a dispute between the parties pursuant to the agreement entered in between them and nothing has been placed on record to show that the agreement was entered into in exercise of any statutory power. Therefore, the dispute involves nothing but enforcement of terms and conditions of a non-statutory contract which was not amenable to the writ jurisdiction under Article 226 of the Constitution of India. While dismissing the Writ Petition, liberty was reserved to the appellant to work out his remedies as available under law.

3. We have heard learned counsel for the parties. Admittedly, before passing the order on 27.09.2004, District Collector did not issue any show-cause notice to the appellant. Order was passed by the District Collector on the basis of an adverse news item published in Andhra Jyothi daily edition dated 05.09.2004 against leasing out of vacant land of District Cooperative Marketing Society Limited, Mahaboobnagar, to the appellant for a period of 36 years on a monthly rental of Rs.3,000/- by the then PIC Chairman. This action on the part of the Chairman was found to be contrary to law, rules and regulations. The lease deed had been duly executed in favour of the appellant on 14.05.2004 and it was duly registered by the Sub-Register concerned for and on behalf of District Cooperative Marketing Society Limited, Mahaboobnagar. Pursuant to the lease deed, the petitioner has been

put in possession of the property. Challenge to the order passed by the District Collector as has been noticed above inter alia is on the ground of violation of principles of natural justice that before issuing show-cause notice his explanation was not sought. Ex parte decision was taken by the District Collector merely on the basis of adverse news item.

4. Learned counsel for the Society placed reliance upon three decisions of this Court reported in **RAMALINGAM & OTHERS Vs. STATE OF A.P., FOOD AND AGRICULTURE (CO.OP.III) DEPARTMENT & OTHERS (1), EXECUTIVE ENGINEER Vs. M/s RASA CONSTRUCTIONS (2) and T. PRAVEENA Vs. DISTRICT COLLECTOR, HYDERABAD (3)** stating that in commercial transactions or disputes relating to the property rights between private persons, Writ Petition is not maintainable and concerned party has to seek appropriate remedy in accordance with law.

5. No doubt when there is alternative, adequate remedy available to the person, normally the High Court will not exercise its powers under Article 226 of the Constitution of India. But there is no such absolute bar in entertaining the Writ Petition for passing appropriate orders at least in three cases which are being culled out by the Supreme Court in number of decisions when there has been violation of principles of nature justice, when there has been violation of fundamental rights and where there has been grave miscarriage of justice. In the instant case, lease deed was granted by the Society and Society had

1. 2002 (3) ALT 462.
2. 2002 (3) ALT 576 (DB).
3. 2002 (6) ALT 112 (DB).

not challenged it. It was the District Collector who has exercised his powers.

District Collector is a statutory authority and admittedly no notice was issued to the appellant. We are not hear on the question whether the right conferred in execution of the lease deed in favour of the appellant was an illegal act or a legal act on the part of the Society. The question raised before us is with regard to the validity of the order of the District Collector in having set aside not only the order of grant of lease by the Society, but also the fact of having the lease deed cancelled by which valuable right accrued in favour of the appellant has been infringed. Undoubtedly, in such like matters Court will definitely exercise its power under Article 226 of Constitution of India by setting aside the order with liberty reserved to the respondents to pass appropriate orders in accordance with law after affording opportunity to the petitioner-appellant and in case if the petitioner feels aggrieved of the orders to be passed, to leave the petitioner to work out his remedies in accordance with law. Learned Single Judge was not justified in dismissing the Writ Petition on the ground that it was a case of non-statutory contract in which the Writ Petition would not be maintainable. Therefore, we allow the appeal and set aside the impugned order. Consequently, we allow the writ petition and set aside the order passed

by the District Collector dated 27.09.2004 with liberty reserved as afore-mentioned. No costs.

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DEVINDER GUPTA. C.J.,

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GHULAM MOHAMMED. J.,

Dated: 24.02.2005.

ES/VRK.

To

1 The Chairman, Mahaboobnagar District Cooperative Marketing Society Limited, Mahaboobnagar, Mahaboobnagar
District.
2 The District Co-operative Officer, Mahaboobnagar, Mahaboobnagar District.
3 The District Collector, Mahaboobnagar.

4. Two CCs to G.P. for Cooperation, High Court Buildings, Hyderabad (OUT).

5. Two CCs to G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

6. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE GHULAM MOHAMMED.

W.A.NO. 2070 OF 2004.

(Judgment of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 24.02.2005.

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